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Attorneys for Defendant  
ZOOSK, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JUAN FLORES-MENDEZ, an individual and  
TRACY GREENAMYER, an individual, and  
on behalf of classes of similarly situated  
individuals,

### **Plaintiffs.**

V.

ZOOSK, INC., a Delaware corporation,

**Defendant.**

Case No. 3:20-cv-4929-WHA

**DECLARATION OF DOUGLAS H.  
MEAL IN SUPPORT OF  
DEFENDANT'S OPPOSITION TO  
PLAINTIFFS' MOTION TO STRIKE**

The Honorable William Alsup  
Date: July 14, 2022  
Time: 12:30 p.m.  
**Courtroom: No. 12, 19<sup>th</sup> Floor**

DECL. OF DOUGLAS H. MEAL ISO  
DEFENDANT'S OPPOSITION TO  
PLAINTIFFS' MOTION TO STRIKE  
3:20-cv-4929-WHA

1 I, Douglas H. Meal, declare:

2       1. I am a member of the Bar of the Commonwealth of Massachusetts and am admitted  
3 *pro hac vice* in the above-captioned action as counsel for Defendant, Zoosk, Inc. (“Zoosk”). I make  
4 this declaration in support of Defendant’s Opposition to Plaintiffs’ Motion to Strike Untimely  
5 Disclosed Evidence and Witnesses. I make this declaration based on my own personal knowledge  
6 and/or my examination of records that are kept by my firm in the regular course of business. If  
7 called to testify as a witness to these matters, I could do so competently.

8       2. Plaintiffs Juan Flores-Mendez and Amber Collins filed the original Class Action  
9 Complaint in July 2020 after Zoosk confirmed it had been the victim of an intrusion into its network  
10 by unauthorized criminal actors (the “Intrusion”). ECF No. 1.

11       3. Zoosk responded to two sets of interrogatories and three sets of requests for  
12 production of documents. Plaintiffs deposed Ethan Tuttle on December 2, 2021 and June 17, 2022,  
13 Conor Callahan on December 16, 2021 and June 24, 2022, and Grant Kessler on February 10, 2022.  
14 Plaintiffs never sought to depose Constantin Garcev or Mathis Bendyk.

15       4. Plaintiff Collins failed to participate meaningfully in discovery and violated the  
16 Court’s discovery order (due, in part, to the fact that she had been arrested and was in custody on  
17 various drug-related felony charges). *See* ECF No. 139.

18       5. Zoosk therefore moved to dismiss Plaintiff Collins. ECF No. 129.

19       6. Plaintiffs’ counsel then filed a third amended class action complaint, ECF No. 142,  
20 immediately followed by a Motion to Substitute Class Representative (“Substitution Motion”),  
21 which sought leave to amend or intervene Tracy Greenamyer as a named plaintiff, which motion  
22 Zoosk opposed. ECF Nos. 144, 149.

23       7. Following briefing and argument, the Court granted the Substitution Motion and  
24 dismissed Plaintiff Collins with prejudice. *See* ECF No. 162.

25       8. On April 29, 2022, Plaintiffs filed a Fourth Amended Class Action Complaint  
26 (“4AC”) and named Plaintiff Flores-Mendez and Plaintiff Greenamyer as the putative class  
27 representatives. ECF No. 191.

1       9. On the same day that the 4AC was filed, the Court issued a scheduling order that  
2 confirmed that (1) fact discovery ended on April 29, 2022 except for approximately four weeks for  
3 Zoosk to take discovery from Plaintiff Greenamyer, (2) opening expert reports were due April 29,  
4 2022—i.e., simultaneous with the filing of the Fourth Amended Complaint and the end of fact  
5 discovery; (3) opposition expert reports were due June 1, 2022; and (4) reply expert reports were  
6 due June 8, 2022. ECF No. 192.

7       10. Plaintiffs served reports by two experts, Gary Olsen and Matthew Strebe, on April  
8 29, 2022.

9       11. While Mr. Strebe was preparing his report, Plaintiffs' counsel asked that he be given  
10 access to the data set that was found on the dark web. Zoosk granted Mr. Strebe access on April  
11 25, 2022 and terminated that access on June 27, 2022 due to the cost of maintaining the instance  
12 that had been created for him.

13       12. Plaintiff Greenamyer responded to interrogatories and requests for production of  
14 documents on May 11, 2022.

15       13. Zoosk amended its Initial Disclosures on May 13, 2022.

16       14. Plaintiff Greenamyer filed a Motion for Class Certification, as the lone class  
17 representative, on May 20, 2022. ECF No. 200.

18       15. Plaintiff Greenamyer was deposed on May 25, 2022.

19       16. Zoosk served expert reports by four experts – Bret Padres, Brian Ellman, Mahmoud  
20 El Halabi, and Chris Cronin—on June 1, 2022.

21       17. Also on June 1, 2022, Zoosk produced a spreadsheet Bates stamped  
22 ZOOSK00002773 containing data that Mr. Ellman had used in his expert report, which Zoosk  
23 produced in order to satisfy its obligation to identify the facts or data Mr. Ellman considered in  
24 forming the opinions expressed by him in his expert report.

25       18. Plaintiffs' experts both served reply reports on June 8, 2022.

26       19. Zoosk opposed the Motion for Class Certification on June 10, 2022. ECF No. 206.

27       20. Plaintiff served her Reply in Support of Motion for Class Certification on June 24,

1 2022. ECF No. 217.

2 21. Contemporaneous with her Reply, Plaintiff served the instant Motion to Strike  
3 Untimely Disclosed Evidence and Witnesses. ECF No. 214.

4 22. Attached hereto as **Exhibit A** is a true and correct copy of Plaintiffs' First Set of  
5 Interrogatories, served on May 18, 2021.

6 23. Attached hereto as **Exhibit B** is a true and correct copy of Plaintiffs' First Document  
7 Requests, served on May 18, 2021.

8 24. Attached hereto as **Exhibit C** is a true and correct copy of Zoosk's Responses to  
9 Plaintiffs' First Set of Interrogatories, served on June 24, 2021.

10 25. Attached hereto as **Exhibit D** is a true and correct copy of Zoosk's Amended  
11 Responses to Plaintiffs' First Set of Interrogatories, served on October 8, 2021.

12 26. Attached hereto as **Exhibit E** is a true and correct copy of excerpts of the Deposition  
13 Transcript of Grant Kessler dated February 10, 2022.

14 27. Attached hereto as **Exhibit F** is a true and correct copy of the Declaration of  
15 Matthew Strebe in Support of Plaintiffs' Motion for Class Certification served on April 29, 2022.

16 28. Attached hereto as **Exhibit G** is a true and correct copy of Plaintiff Greenamyer's  
17 Responses to Interrogatories served on May 11, 2022.

18 29. Attached hereto as **Exhibit H** is a true and correct copy of excerpts of the Deposition  
19 Transcript of Plaintiff Tracy Greenamyer dated May 25, 2022.

20 30. Attached hereto as **Exhibit I** is a true and correct copy of the Reply Report of Gary  
21 D. Olsen served on June 8, 2022.

22 31. Attached hereto as **Exhibit J** is a true and correct copy of a document produced by  
23 Zoosk bearing Bates stamp ZOOSK00000812.

24 I declare under penalty of perjury that the foregoing is true and correct. Executed this 8th  
25 day of July 2022, at Boston, Massachusetts.

26 */s/ Douglas H. Meal* \_\_\_\_\_  
27 DOUGLAS H. MEAL

28 DECL. OF DOUGLAS H. MEAL ISO  
DEFENDANT'S OPPOSITION TO  
PLAINTIFFS' MOTION TO STRIKE  
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